

1 Douglas R. Pahl, OR Bar No. 950476
DPahl@perkinscoie.com
2 PERKINS COIE LLP
1120 N.W. Couch Street, 10th Floor
3 Portland, OR 97209-4128
Telephone: 503.727.2000
4 Facsimile: 503.727.2222

5 Edwin H. Caldie, MN Bar No. 0388930
Pro hac vice pending
6 ed.caldie@stinson.com
STINSON LLP
7 50 S 6th St, Suite 2600
8 Minneapolis, MN 55402
Telephone: (612) 335-1500
9 Facsimile: (612) 335-1657

10 Lucas L. Schneider, CO Bar No. 48125
Admitted pro hac vice in Case No. 17-62772-tmr7
11 lucas.schneider@stinson.com
STINSON LLP
12 1050 17th Street, Suite 2400
13 Denver, CO 80265
Telephone: (303) 376-8414
14 Facsimile: (612) 335-1657

15 Blake Mark-Dias, OR Bar No. 030327
Pro hac vice pending
16 William R. Squires III, OR Bar No. 102366
Pro hac vice pending
17 bmarksdias@corrchronin.com
18 rsquires@corrchronin.com
CORR CRONIN LLP
19 1001 Fourth Avenue, Suite 3900
20 Seattle, Washington 98154-1051
Telephone: (206) 625-8600
21 Facsimile: (206) 625-0900

22 Attorneys for Third-Party Plaintiff
23 *CenturyLink, Inc.*
24
25
26

THIRD PARTY COMPLAINT OF
CENTURYLINK, INC.

Perkins Coie LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Phone: 503.727.2000
Fax: 503.727.2222

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF OREGON

3 In re

4 JACOB JOEL MOON,

5 and

6 KATIE JEAN BEAN,

7 Debtors.

8 CENTURYLINK, INC.,

9 Third-Party Plaintiff,

10 v.

11 TPUSA, INC.,

12 Third-Party Defendant,

13 and

14 ALLIANCEONE RECEIVABLES
MANAGEMENT, INC.,

15 Third-Party Defendant.

Case No. 17-62772-TMR7

Adversary Proceeding No. _____

**THIRD PARTY COMPLAINT OF
CENTURYLINK, INC.**

(Breach of contract; Indemnification; Breach of
warranty; Breach of covenant of good faith and
fair dealing; Contribution)

26
THIRD PARTY COMPLAINT OF
CENTURYLINK, INC.

Perkins Coie LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Phone: 503.727.2000
Fax: 503.727.2222

1 Third-Party Plaintiff CenturyLink, Inc., including its subsidiaries and affiliates as necessary for
2 this action (collectively “CenturyLink”), appearing specially without waiving any jurisdictional defects,
3 and as and for its Third Party Complaint (“Complaint”) against the above captioned Third-Party
4 Defendants, TPUSA, Inc. (“TPUSA”) and AllianceOne Receivables Management, Inc. (“AllianceOne”)
5 (TPUSA and AllianceOne collectively being the “Third-Party Defendants”), jointly and severally, alleges
6 as follows:

7 **PARTIES**

8 1. Third-Party Plaintiff CenturyLink, Inc. is a Louisiana corporation with its principal place
9 of business at 100 CenturyLink Drive, Monroe, Louisiana 71203. CenturyLink, Inc. is a holding company,
10 with affiliates and subsidiaries that are separate and distinct entities, one of which is CenturyTel Service
11 Group, LLC, a Louisiana limited liability company with its principal place of business at 100 CenturyLink
12 Drive, Monroe, Louisiana 71203.

13 2. Third-Party Defendant TPUSA, Inc. is a Delaware corporation with its principal place of
14 business, based upon information and belief, located at 5295 South Commerce Drive, Suite 600, Murray,
15 Utah 84107.

16 3. Third-Party Defendant AllianceOne Receivables Management, Inc. is a Delaware
17 corporation with its principal place of business, based upon information and belief, located at 4850 East
18 Street Road, Suite 300, Trevese, Pennsylvania 19053.

19 **JURISDICTION AND VENUE**

20 4. This is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §§
21 157(b)(1) and 1334(a) – (b), in part due to CenturyLink’s breach of warranty claim, breach of covenant
22 of good faith and fair dealing claim, and contribution claim being wholly dependent on 11 U.S.C. § 524
23 establishing the standard of care and standard of the professional and workmanlike manner, consistent
24 with industry standards, by which one must comply regarding discharge orders. This adversary
25 proceeding is commenced pursuant to Rule 7014(a)(1) of the Federal Rules of Bankruptcy Procedure (the
26 “Bankruptcy Rules”).

5. Alternatively, this is a “related to” proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 157(c)(1) and 1334(a) – (b), for the same reason as stated in paragraph 4 above and because this Complaint hinges upon both the existence of and the effects of the discharge order in the above-referenced bankruptcy case. This adversary proceeding is commenced pursuant to Rule 7014(a)(1) of the Bankruptcy Procedure.

6. Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

GENERAL ALLEGATIONS

8. On or about May 14, 2020, CenturyTel Service Group, LLC, AllianceOne, and TPUSA executed Amendment No. 2 to Statement of Work No. PRA1351.SS10 (“Amendment No. 2”), Amendment No. 2 being “subject to the terms of the Agreement No. PRA1351.0 entered into November 2, 2006, as amended (the “Agreement”),” Amendment No. 2 attached hereto as Exhibit A and incorporated herein by reference.

9. Section II., titled “Amendment,” at paragraph G., all of Amendment No. 2, requires, among other terms and conditions, that “Supplier,” which includes AllianceOne and TPUSA combined, “[W]ill indemnify CenturyLink for all costs, liabilities or expenses, including reasonable attorneys’ fees and costs, relating to any third-party claim based on, or relating to, any actual or alleged violations (as manifested in the form of CenturyLink’s receipt of a claim including, without limitation, a demand letter) by CenturyLink, through acts or omissions by Supplier on CenturyLink’s behalf, of applicable laws, rules, regulations or orders (which, for the avoidance of doubt, includes any actual or alleged violations arising out of or relating to any acts or omissions of Supplier).” (Ex. A).

10. Section II., titled “Amendment,” at paragraph G., all of Amendment No. 2, further states that, “Supplier will, at its option, settle or defend the claim using its own counsel and at its own expense (the responsibility for all expenses incurred related to the defense and any settlement of the claim will be exclusively borne by Supplier effective from CenturyLink’s tendering of the claim to Supplier).” (*Id.*) The same further states that, “If CenturyLink is forced to initiate a defense of a claim due to Supplier’s

1 failure to defend or settle the claim in accordance with this paragraph, and at any time thereafter
2 CenturyLink agrees to tender the ongoing defense of and/or efforts to settle the claim to Supplier, Supplier
3 will reimburse CenturyLink on demand for all costs, liabilities or expenses, including reasonable
4 attorneys' fees (as described in reasonably detailed invoices supplied to Supplier) and costs, incurred by
5 CenturyLink in defending the claim prior to Supplier assuming the ongoing defense of and/or settlement
6 efforts.” (*Id.*).

7 11. The Agreement incorporated within Amendment No. 2, at paragraph 20, states that,
8 “Supplier represents and warrants that: . . . All Services performed under this MSA will be performed in
9 a professional and workmanlike manner, consistent with industry standards; [and] . . . All Services will
10 conform to the requirements and Specifications, and will be free from deficiencies and defects in materials,
11 workmanship, design and/or performance”

12 12. The Agreement, at paragraph 38, states that, “This MSA will be governed by the laws of
13 the State of Colorado without reference to its choice of law rules.”

14 13. On July 1, 2020, the above-referenced debtor, Jacob Joel Moon (“Moon”), filed a
15 Contempt Motion (“Contempt Motion”) [Dkt. No. 27], seeking “a contempt order against CenturyLink,
16 Inc.,” alleging that CenturyLink, Inc. attempted to collect a debt of Moon’s previously discharged in
17 December 2017 in the above-referenced bankruptcy case, all through a series of phone calls.

18 14. On July 14, 2020, CenturyLink filed its Motion to Dismiss, Motion for More Definite
19 Statement, Pursuant to Fed. R. Civ. P. 12(b)(6), 12(e) [Dkt. No. 29], the Court, on August 18, 2020,
20 entering the Order Denying Motion to Dismiss and Granting Motion for More Definite Statement [Dkt.
21 No. 41].

22 15. On September 1, 2020, Moon filed his First Amended Contempt Motion [Dkt. No. 45].

23 16. On September 15, 2020, CenturyLink filed its Objection to First Amended Contempt
24 Motion [Dkt. No. 48], attached hereto as Exhibit B and incorporated herein by reference, stating, among
25 other defenses, that, “Moon’s missed or unanswered calls of unknown content from the phone number of
26 844-212-0179 was from a phone number that CenturyLink traced to TPUSA, Inc. (dba Teleperformance

1 USA) and AllianceOne Receivables Management, Inc., an independent contractor that is not a parent,
2 affiliate, or subsidiary of CenturyLink.”

3 17. Furthermore, between August 13, 2020 and September 16, 2020, CenturyLink has provided
4 Moon, under reservation of rights, two rounds of responses to requests for admission in which
5 CenturyLink detailed that Moon’s missed or unanswered calls of unknown content from the phone number
6 of 844-212-0179 was from a phone number that CenturyLink traced to TPUSA and AllianceOne.

7 18. Also, between August 19, 2020 and August 25, 2020, CenturyLink and Moon have been
8 engaged in motion practice regarding discovery, with Moon filing his Motion to Compel [Dkt. No. 42],
9 forcing CenturyLink to file its Response to Motion to Compel; Request for Protective Order [Dkt. No.
10 44], CenturyLink stating, among other things, that Moon has engaged in premature discovery per LBR
11 7026-1(a)(1) given the lack of any Rule 26 conference, scheduling conference, or scheduling order to
12 present.

13 19. Ultimately, based upon information and belief as a result of CenturyLink’s investigation,
14 CenturyLink believes that the Third-Party Defendants independently made the alleged calls to Moon that
15 form the basis for Moon’s First Amended Contempt Motion, including to the extent the alleged calls
16 would constitute a violation of Moon’s discharge order.

17 20. Between July 27, 2020 and the present, CenturyLink and the Third-Party Defendants have
18 been in regular e-mail and phone contact, during which CenturyLink timely and in conformance with
19 Amendment No. 2 tendered this matter to the Third-Party Defendants.

20 21. The Third-Party Defendants have failed to accept tender of this matter or defend or
21 indemnify CenturyLink as required under Amendment No. 2, also constituting a breach of Amendment
22 No. 2, further causing a breach of the duty of good faith and fair dealing, all by the Third-Party Defendants,
23 jointly and severally, causing CenturyLink present and future damages, including but not limited to the
24 incurring of attorney’s fees, court costs, and other expenses in the defense of the matter that resulted from
25 the “acts or omissions by Supplier.” (Ex. A, Section II., titled “Amendment,” at paragraph G.)
26

1 22. Furthermore, to the extent Moon proves his claims, the Third-Party Defendants have,
2 jointly and severally, breached the warranties provided in the Agreement, and are also liable to
3 CenturyLink for contribution.

4 **COUNT I: BREACH OF CONTRACT**

5 23. CenturyLink hereby re-alleges and incorporates the preceding allegations as if fully alleged
6 herein.

7 24. CenturyLink's affiliate, CenturyTel Service Group, LLC, and the Third-Party Defendants
8 entered into Amendment No. 2, a valid and enforceable agreement.

9 25. CenturyLink, including its affiliate CenturyTel Service Group, LLC, fully and timely
10 performed the obligations under Amendment No. 2, including by tendering this matter to the Third-Party
11 Defendants and regularly providing information and updates to the Third-Party Defendants thereafter.

12 26. The Third-Party Defendants, jointly and severally, breached Amendment No. 2 by, without
13 limitation, failing to accept tender, failing to defend CenturyLink at the cost of the Third-Party Defendants,
14 and/or failing to indemnify CenturyLink for the attorney's fees, costs, and expenses incurred by
15 CenturyLink in this matter, all as further required by Amendment No. 2.

16 27. As a direct and proximate result of the Third-Party Defendants' breach of Amendment No.
17 2, CenturyLink has suffered damages, including to the present, attorney's fees, court costs, and other
18 expenses in the defense of the matter, in addition to future attorney's fees, court costs, other expenses, and
19 any damages payable to Moon, all in an amount to be determined at trial.

20 **COUNT II: INDEMNIFICATION**

21 28. CenturyLink hereby re-alleges and incorporates the preceding allegations as if fully alleged
22 herein.

23 29. CenturyLink's affiliate, CenturyTel Service Group, LLC, and the Third-Party Defendants
24 entered into Amendment No. 2.

25 30. Amendment No. 2, at Section II., titled "Amendment," at paragraph G., contains an
26 indemnification clause that requires, among other indemnification duties, that the Third-Party Defendants,

1 “[W]ill indemnify CenturyLink for all costs, liabilities or expenses, including reasonable attorneys’ fees
2 and costs, relating to any third-party claim based on, or relating to, any actual or alleged violations (as
3 manifested in the form of CenturyLink’s receipt of a claim including, without limitation, a demand letter)
4 by CenturyLink, through acts or omissions by Supplier on CenturyLink’s behalf, of applicable laws, rules,
5 regulations or orders (which, for the avoidance of doubt, includes any actual or alleged violations arising
6 out of or relating to any acts or omissions of Supplier).”

7 31. CenturyLink, including its affiliate CenturyTel Service Group, LLC, fully and timely
8 performed the obligations under Amendment No. 2, including by tendering this matter to the Third-Party
9 Defendants and regularly providing information and updates to the Third-Party Defendants thereafter.

10 32. The Third-Party Defendants, jointly and severally, have failed to accept tender, failed to
11 defend CenturyLink at the cost of the Third-Party Defendants, and/or failed to indemnify CenturyLink for
12 the attorney’s fees, costs, and expenses incurred by CenturyLink in this matter, all as further required by
13 Amendment No. 2.

14 33. As a direct and proximate result, CenturyLink has suffered damages, including to the
15 present, attorney’s fees, court costs, and other expenses in the defense of the matter, and in addition will
16 suffer future damages in the form of attorney’s fees, court costs, other expenses, and any damages payable
17 to Moon, all in an amount to be determined at trial, all which the Third-Party Defendants are required to
18 indemnify CenturyLink for.

19 **COUNT III: BREACH OF WARRANTY**

20 34. CenturyLink hereby re-alleges and incorporates the preceding allegations as if fully alleged
21 herein.

22 35. The Third-Party Defendants, jointly and severally, warranted through the Agreement,
23 which is incorporated into Amendment No. 2, that, “Supplier represents and warrants that: . . . All Services
24 performed under this MSA will be performed in a professional and workmanlike manner, consistent with
25 industry standards; [and] . . . All Services will conform to the requirements and Specifications, and will
26 be free from deficiencies and defects in materials, workmanship, design and/or performance”

1 36. With regard to violations of discharge orders, as alleged by Moon in Moon's First
2 Amended Contempt Motion, the United States Bankruptcy Code at 11 U.S.C. § 524 establishes the
3 standard of the professional and workmanlike manner, consistent with industry standards, by which the
4 Third-Party Defendants must comply regarding discharge orders and the provisioning of the services in
5 Amendment No. 2 and the Agreement.

6 37. CenturyLink, including CenturyTel Service Group, LLC, are entities reasonably expected
7 to benefit from and be affected by the services warranted in the Agreement and Amendment No. 2.

8 38. The services that the Third-Party Defendants jointly and severally provided CenturyTel
9 Service Group, LLC, an affiliate of CenturyLink, Inc., to the extent any of Moon's claims are proven,
10 were not as expressly warranted.

11 39. The Third-Party Defendants jointly and severally breaching the warranty directly and
12 proximately caused damages to CenturyLink, including to the present, attorney's fees, court costs, and
13 other expenses in the defense of the matter, and in addition any future damages in the form of attorney's
14 fees, court costs, other expenses, and any damages payable to Moon, all in an amount to be determined at
15 trial, that CenturyLink suffers.

16 40. CenturyLink, within a reasonable time after CenturyLink discovered or should have
17 discovered the breach of warranty, notified the Third-Party Defendants of the breach.

18 **COUNT IV: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

19 41. CenturyLink hereby re-alleges and incorporates the preceding allegations as if fully alleged
20 herein.

21 42. Under Colorado law, the covenant of good faith and fair dealing is implied into
22 Amendment No. 2 and the Agreement.

23 43. With regard to violations of discharge orders, as alleged by Moon in Moon's First
24 Amended Contempt Motion, the United States Bankruptcy Code at 11 U.S.C. § 524 establishes the
25 standard of care by which the Third-Party Defendants must comply regarding discharge orders and the
26 provisioning of the services in Amendment No. 2 and the Agreement.

44. The Third-Party Defendants, jointly and severally, breached the covenant of good faith and fair dealing by, without limitation, failing to accept tender, failing to defend CenturyLink at the cost of the Third-Party Defendants, and/or failing to indemnify CenturyLink for the attorney's fees, costs, and expenses incurred by CenturyLink in this matter, all as further required by Amendment No. 2.

45. The Third-Party Defendants, jointly and severally, further breached the covenant of good faith and fair dealing by, without limitation, breaching the warranty within the Agreement as plead above, also by failing to abide by the discharge orders and 11 U.S.C. § 524, to the extent Moon proves his claims.

46. As a direct and proximate result, CenturyLink has suffered damages, including to the present, attorney's fees, court costs, and other expenses in the defense of the matter, and in addition will suffer future damages in the form of attorney's fees, court costs, other expenses, and any damages payable to Moon, all in an amount to be determined at trial.

COUNT V: CONTRIBUTION

47. CenturyLink hereby re-alleges and incorporates the preceding allegations as if fully alleged herein.

48. Moon seeks to recover damages from CenturyLink for the alleged calls plead in Moon's First Amended Contempt Motion.

49. The Third-Party Defendants, jointly and severally, owed a duty of care to CenturyLink, including contractually through the Agreement, which is incorporated into Amendment No. 2, the Agreement detailing the duty of care at paragraph 20, stating that, “Supplier represents and warrants that: . . . All Services performed under this MSA will be performed in a professional and workmanlike manner, consistent with industry standards; [and] . . . All Services will conform to the requirements and Specifications, and will be free from deficiencies and defects in materials, workmanship, design and/or performance”

50. Further, the Third-Party Defendants, jointly and severally, in Section II., titled “Amendment,” at paragraph G., all of Amendment No. 2, committed to indemnifying CenturyLink for “all costs, liabilities or expenses, including reasonable attorneys’ fees and costs, relating to any third-party

1 claim based on, or relating to, any actual or alleged violations . . . by CenturyLink, through acts or
2 omissions by Supplier on CenturyLink's behalf, of applicable laws, rules, regulations or *orders* . . .” (Ex.
3 A) (emphasis added).

4 51. With regard to violations of discharge orders, as alleged by Moon in Moon's First
5 Amended Contempt Motion, the United States Bankruptcy Code at 11 U.S.C. § 524 establishes the
6 standard of the professional and workmanlike manner, consistent with industry standards, by which the
7 Third-Party Defendants must comply regarding discharge orders and the provisions of the services in
8 Amendment No. 2 and the Agreement.

9 52. To the extent any of Moon's claims are proven against CenturyLink, CenturyLink has
10 incurred, and will occur in the future, damages, including to the present, attorney's fees, court costs, and
11 other expenses in the defense of the matter, and in addition will suffer future damages in the form of
12 attorney's fees, court costs, other expenses, and any damages payable to Moon, all in an amount to be
13 determined at trial, all which the Third-Party Defendants are responsible for.

14 53. In resolving Moon's claims, CenturyLink will have paid, or will pay, more than its
15 respective share of liability.

16 54. To the extent any of Moon's claims are proven, each Third-Party Defendant, jointly and
17 severally, is responsible for paying CenturyLink their proportionate share of damages that are attributable
18 to the Third-Party Defendants', jointly and severally, actions regarding their failure to comply with
19 applicable orders, breaching Amendment No. 2 and the Agreement as plead above, breaching the warranty
20 within the Agreement as plead above, failing to indemnify CenturyLink under Amendment No. 2 as plead
21 above, and/or breaching the covenant of good faith and fair dealing as plead above.

22
23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, CenturyLink prays that judgment be entered in its favor and against the Third-
25 Party Defendants:
26

- 1 1. Awarding CenturyLink monetary damages from the Third-Party Defendants, jointly and
- 2 severally, for the Third-Party Defendants' breaches of contract, indemnification duties, breaches of
- 3 warranty, breaches of the covenant of good faith and fair dealing, and contribution;
- 4 2. Awarding reasonable attorney's fees and costs, including pursuant to the indemnification
- 5 terms in Amendment No. 2 and any other terms or conditions of the Agreement or Amendment No. 2;
- 6 3. Awarding pre- and post-judgment interest; and
- 7 4. Awarding CenturyLink such other relief as the Court deems just and proper.

1 DATED: September 29, 2020

2 **PERKINS COIE LLP**

3 By: /s/ Douglas R. Pahl

4 Douglas R. Pahl, OR Bar No. 950476
5 DPahl@perkinscoie.com
6 1120 N.W. Couch Street, 10th Floor
7 Portland, OR 97209-4128
8 Telephone: 503.727.2000
9 Facsimile: 503.727.2222

10 Edwin H. Caldie, MN Bar No. 0388930
11 ed.caldie@stinson.com
12 STINSON LLP
13 50 S 6th St, Suite 2600
14 Minneapolis, MN 55402
15 Telephone: (612) 335-1500
16 Facsimile: (612) 335-1657

17 Lucas L. Schneider, CO Bar No. 48125 *Admitted*
18 *pro hac vice in Case No. 17-62772-tmr7*
19 lucas.schneider@stinson.com
20 STINSON LLP
21 1050 17th Street, Suite 2400
22 Denver, CO 80265
23 Telephone: (303) 376-8414
24 Facsimile: (612) 335-1657

25 Blake Mark-Dias, OR Bar No. 030327 *Admission*
26 *pending*
William R. Squires III, OR Bar No. 102366
Admission pending
CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Telephone: (206) 625-8600
Facsimile: (206) 625-0900

Attorneys for Third-Party Plaintiff
CenturyLink, Inc.